

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 773 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

USMANGANI YAKUB SHAH

Versus

DISTRICT MAGISTRATE

Appearance:

MR ANIL S DAVE for Petitioner

Mr. K.T. Dave, A.G.P.for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/09/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Anil S. Dave for the petitioner and learned A.G.P. Mr. K.T.Dave for the respondents nos.1, 2 and 3.

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the impugned order of detention

dated 20-11-1998 passed by the respondent no.1- District Magistrate, Surat, against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short).

2. The petitioner has produced the impugned order dt.20-11-1998 vide Annexure "A" while the committal order which was also passed on the same day has been produced vide Annexure "B" whereby the petitioner was ordered to be kept at Sabarmati Central Jail and to be treated as Class II prisoner.

3. That the grounds of detention supplied to the petitioner dated 20th November, 1998 indicate that as many as seven Prohibition Cases are registered against the petitioner at Olpad Police Station. The said cases are registered on 29-3-1994, 29-12-1995, 3-7-1997, 3-11-1997, 31-5-1998, 22-7-1998 and 5-8-1998. Furthermore, two Chapter Cases bearing nos.41/98 dt.15-2-1998 under Section 110 E & H of Cr.P.C. and 126/98 dt.17-2-1998 under Section 93 of the Bombay Prohibition Act are also filed. That all the cases are pending investigation.

That the grounds of detention further indicate that four witnesses on assurance of anonymity have supplied information against the petitioner, out of which, the statements of two of the witnesses are recorded on 8-9-1998.

4. The respondent no.1 having construed the material placed before him held that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA" and that resort to ordinary provisions of law are not likely to prevent the petitioner from continuing his illegal activity, and as such, the impugned order has been passed.

5. Learned Advocate Shri Anil S. Dave has assailed the impugned order on numerous grounds. It has been contended that on scrutiny of grounds of detention, it appears that last incident of registered criminal case against the petitioner has occurred on 5-8-98. That thereafter, no case has been registered against the petitioner. That the anonymous witnesses have made statements with regard to the incident dated 8th September, 1998 and thereafter there is nothing in the grounds of detention to show that the petitioner has continued alleged antisocial activities till the date of

impugned order i.e. 20-11-1998 when action has been taken. It has been submitted on behalf of the petitioner that on account of snapping of live link between the alleged criminal activity and impugned action under "PASA", the impugned order is vitiated and is bad in law.

6. That vide earlier order dated 28th July, 1999, rule was issued and appears to have been served. However, no affidavit-in-reply appears to have been filed on behalf of either of the respondents.

7. It is a well settled proposition of law that exercise of power under Section 3(1) of "PASA" has to be exercised on subjective satisfaction derived from the material placed before the authority including the satisfaction in respect to live link between the alleged criminal activity and the impugned action taken by passing the order of detention. The dictum that if the detaining authority has failed to explain inordinate delay in taking action or no reasonable explanation has been supplied on behalf of the respondent-State, the impugned order of detention is vitiated has also been accepted as a proposition of law by series of decisions of different High Courts and apex Court including this Court.

8. In the instant case, the alleged activities of bootlegging attributed to the petitioner was found during the months of August-September, 1998 while action is taken by passing the impugned order on 20th November, 1998. As no explanation, much less , reasonable explanation is coming forth for the inordinate delay which has taken place in passing the impugned order, I am constrained to hold that the impugned order is bad in law and the petition deserves to be allowed.

9. As a result of the foregoing discussion, the petition is allowed. The impugned order of detention dated 20-11-1998 passed by the respondent no.1-District Magistrate, Surat against the petitioner is hereby quashed and set aside. The petitioner-detenu-USMAN GANI YAKUB SHAH is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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